

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VYACHESLAV BERDNIK,
Plaintiff,
v.
MAIN STREAM SOLUTIONS, INC. et
al.,
Defendant.

Case No. 2:23-cv-1928-KJM-CSK
ORDER GRANTING MODIFIED
STIPULATED PROTECTIVE ORDER
(ECF No. 16.)

The Court has reviewed the parties' stipulated protective order below (ECF No. 16), and finds it comports with the relevant authorities and the Court's Local Rule. See L.R. 141.1. The Court APPROVES the protective order, subject to the following clarifications.

First, the Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); *see MD Helicopters, Inc. v. Aerometals, Inc.*, 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed.

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Further, the protective order appears to contain references to local rules from other districts. (See Par. 6.3 (referencing Civil Local Rule 7, which does not exist in the Eastern District).) To the extent the parties' protective order references local rules of other districts, the Court rejects these references and reminds the parties to refer to the local rules of the Eastern District of California.

Dated: June 6, 2024

Chi Soo Kim
CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

3, berd.1928

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VYACHESLAV BERDNIK, an individual,

Plaintiff

V.

MAIN STREAM SOLUTIONS, INC., a California corporation, and SHANE HALSTEAD, an individual,

Defendants.

Case No. 2:23-cv-01928-KJM-KJN

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information related to Defendants' financial and tax information, for which special protection from disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; CAED Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

The parties jointly contend that there is typically a particularized need for protection as to any financial or tax information that is not generally known to the public, because of the privacy and economic interests at stake. Because of these sensitive interests, a court order should address these documents rather than a private agreement between the parties.

The entry of a Protective Order by the Court pursuant to this Stipulation shall not be construed as any ruling by the Court on the privilege claims described in this section.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is generated, stored, or maintained) or tangible things relating to or revealing Defendants’ financial and tax information that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designated information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or affiliated with the law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staff).

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
5 storing, or retrieving data in any form or medium) and their employees and subcontractors.

6 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
7 "CONFIDENTIAL."

8 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material (as
12 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
13 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the following
16 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
17 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
18 publication not involving a violation of this Order, including becoming part of the public record
19 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure
20 or obtained by the Receiving Party after the disclosure from a source who obtained the information
21 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
22 Material at trial shall be governed by a separate agreement or order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
26 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
27 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion

1 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
2 limits for filing any motions or applications for extension of time pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
5 Non-Party that designates information or items for protection under this Order must take care to
6 limit any such designation to specific material that qualifies under the appropriate standards. The
7 Designating Party must designate for protection only those parts of material, documents, items, or
8 oral or written communications that qualify—so that other portions of the material, documents,
9 items, or communications for which protection is not warranted are not swept unjustifiably within
10 the ambit of this Order.

11 Mass indiscriminate, or routinized designations are prohibited. Designations that are shown
12 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
13 encumber or retard the case development process or to impose unnecessary expenses and burdens on
14 other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party’s attention that information or items that it designated for
16 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
17 that is withdrawing the mistaken designation.

18 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order (see,
19 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
20 Discovery Material that qualifies for protection under this Order must be clearly so designated before
21 the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) For information in documentary form (e.g., paper or electronic documents, but excluding
24 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
25 legend of “CONFIDENTIAL” to each page that contains protected material. If only a portion or
26 portions of the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate marking in the margins).

1 A Party or Non-Party that makes original documents or materials available for inspection need
2 not designate them for protection until after the inspecting Party has indicated which material it would
3 like copied and produced. During the inspection and before the designation, all of the material made
4 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified
5 the documents it wants copied and produced, the Producing Party must determine which documents,
6 or portions thereof, qualify for protection under this Order. Then, before producing the specified
7 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
8 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
9 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the
12 Designating Party identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony.

14 (c) For information produced in some form other than documentary and for any other
15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend “CONFIDENTIAL” If only a
17 portion or portions of the information or item warrant protection, the Producing Party, to the extent
18 practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party’s right
21 to secure protection under this Order for such material. Upon timely correction of a designation, the
22 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
23 the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
28 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is closed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
6 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
7 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
8 begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication
9 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
10 Party must explain the basis for its belief that the confidentiality designation was not proper and
11 must give the Designating Party an opportunity to review the designated material, to reconsider the
12 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
13 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
14 has engaged in this meet and confer process first or establish that the Designating Party is unwilling
15 to participate in the meet and confer process in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the Designating Party shall file and serve a motion to retain confidentiality ~~under Civil~~
18 ~~Local Rule~~ 7 Local Rule 251 (and in compliance with Local Rule 141, if applicable) within 21 days
19 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
20 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
21 by a competent declaration affirming that the movant has complied with the meet and confer
22 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
23 motion including the required declaration within 21 days (or 14 days, if applicable) shall
24 automatically waive the confidentiality designation for each challenged designation. In addition, the
25 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
26 good cause for doing so, including a challenge to the designation of a deposition transcript or any
27 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
28

1 competent declaration affirming that the movant has complied with the meet and confer
2 requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
6 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
7 retain confidentiality as described above, all parties shall continue to afford the material in question
8 the level of protection to which it is entitled under the Producing Party's designation until the court
9 rules on the challenge.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with the case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
14 the categories of persons and under the conditions described in this Order. When the litigation has
15 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
18 secure manner that ensures that access is limited to the persons authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
20 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
21 information or item designated "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
23 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
24 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
25 hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
27 to whom disclosure is reasonably necessary for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions shall be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) Make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the

1 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
2 seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
6 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
10 Be Bound” that is attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
14 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
15 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
16 modify whatever procedure may be established in an e-discovery order that provides for production
17 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
18 parties reach an agreement on the effect of disclosure of a communication or information covered by
19 the attorney-client privilege or work product protection, the parties may incorporate their agreement
20 in the stipulated protective order submitted to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
23 its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
25 no Party waives any right it otherwise would have to object to disclosing or producing any
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
27 Party waives any right to object on any ground to use in evidence of any of the material covered by
28 this Protective Order.

12.3 Filing Protected Material. By stipulating to the entry of this Protective Order no Party
1 waives any right it otherwise would have to object to disclosing or producing any information or
2 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
3 right to object on any ground to use in evidence of any of the material covered by this Protective
4 Order

5 **13. FINAL DISPOSITION**

6 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
7 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
8 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
10 the Protected Material is returned or destroyed, the Receiving Party must submit a written
11 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
12 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
13 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
15 Material. Notwithstanding this provision, Counsel is entitled to retain an archival copy of all
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
18 and expert work product, even if such materials contain Protected Material. Any such archival copies
19 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION).

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 Dated: June 7, 2024

23 By: /s/ Dayra Juarez
24 Attorney for Defendant
25 MAIN STREAM SOLUTIONS, INC. and
SHANE HALSTEAD

26 Dated: June 7, 2024

27 By: /s/ Joshua H. Watson
28 Attorney for Plaintiff
VYASCHESLAV BERDNIK

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court of the Eastern District of California on _____ in the case of *Vyacheslav Berdnik v. Main Stream Solutions, Inc. and Shane Halstead*, Case No. 2:23-CV-01928-KJM-CSK. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to do comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California, for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name:

Signature:

PROOF OF SERVICE

I am employed in the City and County of Sacramento, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2277 Fair Oaks Boulevard, Suite 455, Sacramento, CA 95825.

On Friday, June 07, 2024, the following document(s):

STIPULATED PROTECTIVE ORDER

were served on all parties in this action addressed as follows:

CLAYEO C. ARNOLD, APC

Joshua H. Watson, Esq.
865 Howe Avenue Ste 300
Sacramento, CA 95825
Email: jwatson@justice4you.com
Email: afigueroa@justice4you.com

Service was accomplished by:

MAIL – I am readily familiar with the firm's practice of collection and processing documents and correspondence for mailing. Under that practice, the envelope would be deposited with the U.S. Postal Service on today's date with postage thereon fully prepaid at Sacramento, California in the ordinary course of business.

PERSONAL SERVICE – I am readily familiar with this firm's practice regarding the use of courier services. Under that practice, the courier service would dispatch a courier to this firm to pick up and personally deliver the document(s) by close of business on today's date to the above addressee(s).

ELECTRONIC MAIL – I served via electronic mail the above-described documents to the person or persons at the email addresses listed above on the date stated herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. My email address is hspaulding@pkwhlaw.com.

OVERNIGHT DELIVERY – I am readily familiar with the firm's practice of collecting and processing correspondence for shipping via overnight delivery service. Under that practice it would be deposited in an overnight delivery service pick-up box or office on the same day with fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 7, 2024 in Sacramento, California

/s/ Lizett Portillo